

Attorney General

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Phoenix, Arizona 85007

Robert R. Corbin

February 24, 1988

Mr. Ronald J. Stolkin
Karp, Stolkin, Weiss & McDonald, P.C.
1200 Great American Tower
32 North Stone Avenue
Tucson, Arizona 85701-1483

Re: I88-031 (R87-203)

Dear Mr. Stolkin:

We have reviewed your December 15, 1987 opinion that the Pima County Community College District Governing Board is authorized to pay the traveling expenses of candidates interviewing for employment with the district. Pursuant to A.R.S. § 15-1448(H), we revise that opinion.

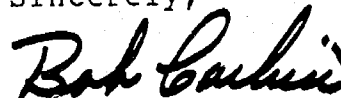
Whether the Pima County Community College District Governing Board may pay employment candidates' traveling expenses depends on whether the Board has statutory authority to do so. See generally, Ariz. Atty. Gen. Ops. I82-116 and I84-029 (a political subdivision, such as a community college district, has only those powers expressly granted to it by statute). See, School District No. 69 of Maricopa County v. Altherr, 10 Ariz. App. 333, 458 P.2d 537 (1969), and Cabrillo Community College District v. California Junior College Association, 44 Cal. App. 3d 367, 118 Cal. Rptr. 708 (1975). But cf. Ariz. Atty. Gen. Op. I76-182 (a community college district governing board has the implied authority to provide legal services to its students as part of the student activities program of a community college district).

The only statute that arguably grants authority to a community college district governing board to pay employment candidates' traveling expenses is A.R.S. § 15-1444(A)(5), which requires the district governing board to "[a]ppoint and employ a president or presidents, vice-presidents, deans, professors, instructors, lecturers, fellows and such other officers and

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employees it deems necessary." That section does not expressly authorize the payment of the expenses of applicants for employment; therefore, we must ascertain whether such authority may be implied in the statute, inasmuch as the legislative intent of a statute includes that which is necessarily implied as well as what is expressed. Maricopa County v. Douglas, 69 Ariz. 35, 208 P.2d 646 (1949). Our analysis of A.R.S. § 15-1444(A)(5) leads us to conclude that it does not authorize the payment of employment candidates' traveling expenses because the payment of such expenses does not appear to be necessary for the district board to obtain employment candidates. We have not found any legislative history or other statutory authority that would lead us to the conclusion that a community college district must pay such traveling expenses in order to fill the positions authorized by A.R.S. § 15-1444(A)(5). We note also that A.R.S. § 35-196.01 prohibits all state budget units from paying such expenses in the absence of specific authorization by legislative appropriation. The absence of express authorization for community college district boards to pay such expenses and the strong public policy against the payment of such expenses expressed in A.R.S. § 35-196.01 leads us to conclude that community college district governing boards may not pay such expenses.

Sincerely,



BOB CORBIN
Attorney General

BC:JDR:FWS:1sp

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December 17, 1987

R87- 203

Martin
12/21/87

EDUCATION OPINION

ISSUE NO LATER THAN

2-19-88

Willie S. Lewis
Interim Executive Vice President of Operations
Pima Community College
P.O. Box 3010
Tucson, AZ 85702-3010

Re: Reimbursement of Travel Expenses for Job Applicants

Dear Willie:

You have requested a legal opinion as to whether Pima College can pay the travel expenses for candidates interviewing for positions at Pima College. As part of your request, you informed me that you have had "numerous discussions with staff and persons in the state Attorney General's Office" and that those people have expressed serious doubts about the legality of paying such travel expenses. You have informed me that most people with whom you have spoken conclude that A.R.S. §38-621 (the statute that specifically allows reimbursement for travel expenses) limits payment of expenses to district employees only, and not to prospective employees. You cited Attorney General Opinion No. 66-23-L in support of that position. You also cited that A.G. opinion as authority for the argument that any expenditures for travel and subsistence for persons other than district employees or board members would constitute an illegal expenditure of funds.

I am surprised by the informal opinions you received from the Attorney General's office. My experience has been that the Attorney General (who does not represent PCC) will not directly provide advice to PCC, formally or informally. The Attorney General reviews legal opinions given by the College's attorney pursuant to A.R.S. §15-1448.

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Your statements about the A.G.'s and other persons' reliance on A.G. Opinion 66-23-L (June 27, 1966) was also surprising. That opinion states that school districts are subject to the travel expense provisions of A.R.S. §38-621 et seq. and that §38-621 limits reimbursement to employees and board members. That opinion, however, does not control here, since community colleges, unlike school districts, are not subject to A.R.S. §38-621.

There is a later A.G. Opinion, No. 185-044 (April 3, 1985), holding that community colleges are subject to A.R.S. §38-621. That opinion was superseded by legislation passed more than two years ago.

As we have discussed, A.R.S. §38-621 et seq. sets forth the statutory guidelines for reimbursement of travel expenses for "...every public officer, deputy or employee of the state, or of any department, institution or agency thereof...." In May, 1985, however, A.R.S. §15-1406 was enacted. That statute provides as follows:

"Sections 38-608, 38-609, 38-610 and 38-613 relating to all public officers and employees apply to district board members and district officers and employees. The other provisions of Title 38, Chapter 4, relating to public officers and employees of this state do not apply to [community college] district board members or [community college] district officers or employees." (Emphasis added.)¹

A.R.S. §38-621 is contained in Title 38, Chapter 4 of the Arizona Revised Statutes. Therefore, it is not applicable to community colleges and does not answer the question you have raised.

In order to answer that question, we must examine the statutory and constitutional provisions defining and limiting the Board's powers. The legislative grant of power to the PCC Board is found in A.R.S. §15-1444. That statute gives the Board the express authority to appoint and employ a president and other employees and officers and to determine salaries for those people

¹The statute was passed on May 14, 1985, but was made retroactively effective to April 3, 1985. The retroactive application to the very date of the issuance of A.G. Opinion No. 185-044 seems to indicate that the statute was specifically intended to overrule the A.G. opinion, although I have found no authority expressly stating that intention.

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it appoints and employs. In addition, the Board has such other powers that reasonably may be implied to effectuate its purposes. Arizona Board of Regents v. Harper, 108 Ariz. 223, 495, P.2d 453 (1972). See also Attorney General Opinion No. 187-132 (October 16, 1987).

Your inquiry related primarily to the current search for a new college president. The PCCCD Governing Board may determine that payment of travel expenses to out-of-state applicants would aid the College and serve a public purpose by allowing the College to bring in the most qualified and varied candidates from around the country. If that were the Board's purpose, I believe that such payments could fall within the Board's implied powers to hire personnel. And I do not believe that such an expenditure would be an illegal gift of public funds in violation of the State Constitution because a public purpose would be served and there would be no donation or subsidy given to a private association. In fact, the College would be receiving valuable consideration. Better qualified candidates, who otherwise might not come to Arizona because of the travel costs, would travel personally to PCCCD, thereby allowing the selection committee to better evaluate all of the candidates.

In deciding whether an expenditure violates the Constitution, one must determine that it is for a public purpose and that the College receives a reasonable consideration in return for the expenditure. See Wisturber v. Paradise Valley Unified School District, 141 Ariz. 346, 687 P.2d 354 (1984). In that case, a teacher was released from her teaching duties in order to conduct union business. The teacher received pay from the union for performing these duties, but she also received her teaching salary from the district. The school district claimed that this arrangement would inure to the benefit of the district. In approving the arrangement, the Supreme Court relied on the district's contention that the arrangement actually aided the district and, therefore, a public purpose was served. In addition, the court found that there was no donation nor subsidy to a private association. The court also recognized that the term "public purpose" was incapable of exact definition and that it changes to meet new developments and conditions of the times, citing City of Glendale v. White, 67 Ariz. 231, 236, 194 P.2d 435, 438 (1948).

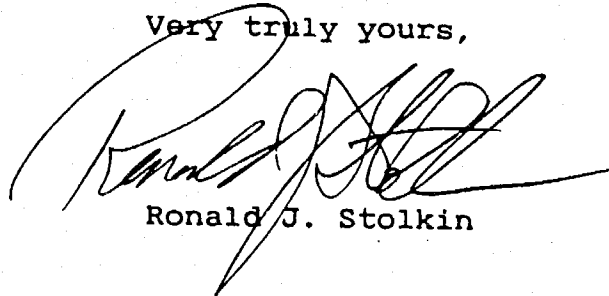
In conclusion, the legislature has expressly excluded community college districts from the travel reimbursement restrictions of A.R.S. §38-621 et seq. Therefore, as long as the College does not expend monies in violation of the Arizona Constitution, it is my opinion that expenses advanced as part of

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the hiring process fall within the Board's implied powers necessary to effectuate the hiring process.

Pursuant to A.R.S. §15-1448, a copy of this opinion is being transmitted to the Attorney General for review.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Ronald J. Stolkin', is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Ronald J. Stolkin

RJS/kma

cc Attorney General's Office
Governing Board Members
Interim President Navarrette